



Todd R. G. Hill  
119 Vine Street  
Belton, TX 76513  
+1 [661] 899-8899  
toddryangregoryhill@gmail.com  
*In Propria Persona*

**UNITED STATES DISTRICT COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

**TODD R. G. HILL, et al,**

**Plaintiffs**

**vs.**

**THE BOARD OF DIRECTORS,  
OFFICERS AND AGENTS AND  
INDIVIDUALS OF THE PEOPLES  
COLLEGE OF LAW, et al.,**

**Defendants.**

**CIVIL ACTION NO. 2:23-cv-01298-CV-BFM**

**The Hon. Cynthia Valenzuela**  
Courtroom 5D, 5th Floor

**Magistrate Judge Brianna Fuller Mircheff**  
Courtroom 780, 7th Floor

**PLAINTIFF'S OBJECTIONS TO  
MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION (DOCKET 213)**

**NO ORAL ARGUMENT REQUESTED**

CONTENTS

I. INTRODUCTION & SUMMARY .....	4
II. LEGAL STANDARDS FOR REVIEW.....	9
III. OBJECTIONS TO THE MAGISTRATE JUDGE’S RECOMMENDATIONS .....	11
A. UNDER EX PARTE YOUNG, STATE OFFICIALS WHO ACT BEYOND THEIR LAWFUL AUTHORITY ARE NOT ENTITLED TO SOVEREIGN IMMUNITY.....	11
B. THE MAGISTRATE IMPROPERLY MADE FACTUAL DETERMINATIONS AT THE MOTION-TO-DISMISS STAGE.....	13
C. THE STATE BAR IS SUBJECT TO SUIT UNDER <i>EX PARTE YOUNG</i> .....	15
D. THE STATE BAR’S CONDUCT WAS NOT A JUDICIAL FUNCTION, SO SOVEREIGN IMMUNITY DOES NOT APPLY .....	15
E. PLAINTIFF’S CLAIMS SEEK PROSPECTIVE INJUNCTIVE AND DECLARATORY RELIEF, MAKING THEM VALID UNDER EX PARTE YOUNG .....	15
F. THE STATE BAR’S ONGOING FAILURE TO ENFORCE ACCREDITATION STANDARDS IS CONTINUING VIOLATION.....	16
G. IF THE COURT BELIEVES A PROPER DEFENDANT WAS NOT NAMED, PLAINTIFF SHOULD BE GRANTED, AND REQUESTS, LEAVE TO AMEND.....	16
H. THE COURT ERRED IN ADJUDICATION OF PLAINTIFF’S UNOPPOSED JUDICIAL NOTICE REQUESTS (DOCKET 197 & 199) .....	20
I. THE COURT APPLIED A HIGHER STANDARD TO TITLE VI & EQUAL PROTECTION CLAIMS THAN REQUIRED .....	21
III. THE REPORT & RECOMMENDATION MUST BE REJECTED BECAUSE IT SUFFERS ADDITIONAL LEGAL DEFICIENCIES SPECIFIC TO PLAINTIFF’S FEDERAL CLAIMS.....	22
A. INCORRECT APPLICATION OF TITLE VI & EQUAL PROTECTION STANDARDS.....	22
B. MISAPPLICATION OF RICO ENTERPRISE STANDARD .....	23
IV. CONCLUSION.....	25
STATEMENT OF COMPLIANCE WITH LOCAL RULE 11-6.1 .....	27
PLAINTIFF'S PROOF OF SERVICE .....	28

**Cases**

<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 678 (2009) .....	7, 12
<i>Dart v. Craigslist, Inc.</i> , 665 F. Supp. 2d 961, 965 (N.D. Ill. 2009) .....	2, 18
<i>Edelman v. Jordan</i> , 415 U.S. 651, 667 (1974).....	15
<i>Erickson v. Pardus</i> , 551 U.S. 89, 94 (2007) .....	7, 12
<i>Ex parte Young</i> , 209 U.S. 123 (1908) .....	16, 25

<i>Foman v. Davis</i> , 371 U.S. 178, 182 (1962) .....	8, 25
<i>FTC v. Standard Oil Co.</i> , 449 U.S. 232, 244 (1980) .....	14
<i>Guardians Ass’n v. Civil Serv. Comm’n</i> , 463 U.S. 582 (1983) .....	20, 21
<i>Hafer v. Melo</i> , 502 U.S. 21, 28 (1991).....	17
<i>In re Tyrone F. Conner Corp., Inc.</i> , 140 B.R. 771, 781 (Bankr. E.D. Cal. 1992) .....	17
<i>Khoja v. Orexigen Therapeutics, Inc.</i> , 899 F.3d 988 (9th Cir. 2018) .....	5, 20
<i>LSO, Ltd. v. Stroh</i> , 205 F.3d 1146, 1154 (9th Cir. 2000).....	11
<i>McDonnell Douglas Corp. v. Commodore Bus. Machs., Inc.</i> .....	9
<i>Papasan v. Allain</i> , 478 U.S. 265, 282 (1986) .....	15
<i>Pennhurst State Sch. &amp; Hosp. v. Halderman</i> , 465 U.S. 89 (1984) .....	14
<i>Reves v. Ernst &amp; Young</i> , 507 U.S. 170, 179 (1993).....	23
<i>Texas Dep’t of Housing v. Inclusive Communities Project, Inc.</i> , 576 U.S. 519 (2015).....	20, 21
<i>United States v. Raddatz</i> , 447 U.S. 667, 673-676 (1980) .....	2, 9
<i>United States v. Reese</i> , 775 F.2d 1066, 1072 (9th Cir. 1985).....	24
<i>United States v. Turkette</i> , 452 U.S. 576, 583 (1981) .....	7, 22, 23
<i>Usher v. City of Los Angeles</i> , 828 F.2d 556, 561 (9th Cir. 1987).....	8, 12
<i>Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.</i> , 535 U.S. 635, 645 (2002) .....	14, 16
<i>Village of Arlington Heights v. Metro. Hous. Dev. Corp.</i> , 429 U.S. 252, 266 (1977).....	22
<i>Will v. Mich. Dep’t of State Police</i> , 491 U.S. 58 (1989) .....	26
<b>Statutes</b>	
28 U.S.C. § 636(b)(1).....	3
28 U.S.C. § 636(b)(1)(C) .....	8
California Public Records Act Request .....	6
<b>Rules</b>	
Fed. R. Civ. P. Rule 8 .....	3
Federal Rule of Civil Procedure 12(b)(6) .....	12
Federal Rule of Civil Procedure 72(b)(3) .....	2, 8
Federal Rule of Evidence 201 .....	2, 5
Federal Rule of Evidence 201(b) .....	17

**TO THE HONORABLE COURT AND ALL PARTIES:**

Plaintiff respectfully submits the following objections to the Magistrate Judge's Report and Recommendation, issued on February 12, 2025 (Docket 213), for this Court's de novo review. While Plaintiff appreciates the Court's careful consideration of the complex issues presented in this case, he believes that certain aspects of the Report misapply established legal standards and omit key arguments that warrant further review. Plaintiff submits these objections in the interest of ensuring a full and fair adjudication of the claims and respectfully requests that this Court consider the points set forth below.

**I. INTRODUCTION & SUMMARY**

Plaintiff Todd R.G. Hill respectfully submits these objections to the Magistrate Judge's Report and Recommendation (Docket 213) pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3). While the Report correctly acknowledges conformance with Fed. R. Civ. P. Rule 8 and that Plaintiff has asserted serious allegations regarding procedural irregularities and misconduct at the People's College of Law (PCL) and among its agents, it erroneously recommends dismissal of all claims against the State Bar of California and its officials with prejudice, despite substantial evidence of their discretionary regulatory failures.

The Magistrate's recommendation is not simply an erroneous application of law; it reflects a systematic disregard for procedural fairness and established legal standards. The failure to rule on unopposed judicial notice, the improper application of sovereign immunity, and the selective

1 misinterpretation of civil rights and RICO precedents are errors so fundamental that they undermine  
2 confidence in the judicial process. This Court must conduct a *de novo* review and correct these legal  
3 missteps to ensure that justice is not obstructed through procedural evasion.  
4

5 The Magistrate’s recommendation misapplies several legal standards in ways that  
6 significantly prejudice Plaintiff:  
7

- 8 1. Under *Ex Parte Young*, State Officials Who Act Beyond Their Lawful Authority Are Not  
9 Entitled To Sovereign Immunity.

10 The State Bar’s failure to act on known violations of accreditation standards, as well as its  
11 failure to prevent the discriminatory practices at PCL, goes beyond its lawful duty, making this case  
12 eligible for federal jurisdiction and allowing Todd to bring claims against the State Bar.

13 Factual support is offered by the TAC itself, as well as Docket 199’s, Exhibit C’s request for  
14 judicial notice and supplementation of the record: “The State Bar knowingly allowed PCL to operate  
15 while it was noncompliant with accreditation and civil rights standards. This action—or inaction—  
16 has caused clear harm, particularly to minority students at PCL, whose education was compromised  
17 by the Bar’s regulatory negligence. As such, the State Bar is not immune to these federal claims  
18 under *Ex parte Young*.”  
19

- 20 2. The Report Improperly Applies Sovereign Immunity And Qualified Immunity To Dismiss  
21 The State Bar Defendants, Despite Their Discretionary And Non-Adjudicative Roles In  
22 Overseeing PCL.

23 Notably, Plaintiff has also requested declaratory relief, and the report fails to mention why  
24 Plaintiff may not be entitled to the requested remedy.  
25

26 The Magistrate Judge’s Report and Recommendation (Docket 213) fails to address Plaintiff’s  
27 request for declaratory relief under 28 U.S.C. § 2201. The Third Amended Complaint explicitly  
28

1 sought a declaration regarding the State Bar's failure to enforce accreditation standards, yet the  
2 Report does not analyze this claim or explain its denial. Federal courts must evaluate declaratory  
3 relief requests where they present an actual legal controversy. See *MedImmune, Inc. v. Genentech,*  
4 *Inc.*, 549 U.S. 118, 126 (2007). By ignoring this request, the Magistrate's recommendation is  
5 incomplete and legally deficient, warranting *de novo* review by this Court.  
6

7  
8 The Magistrate's failure to even address *Ex parte Young* demonstrates a fundamental error in  
9 legal reasoning. Courts have consistently applied this doctrine to prevent state officials from using  
10 sovereign immunity as a shield for unlawful actions. Importantly, Plaintiff has also requested  
11 declaratory relief. The District Judge must reverse this recommendation, as allowing it to stand  
12 would set a dangerous precedent that enables regulatory agencies to engage in misconduct without  
13 accountability.  
14

15 3. The Magistrate Fails To Adequately Address Plaintiff's Unopposed Request For Judicial  
16 Notice (Dockets 197 & 199), Which Should Have Been Granted As A Matter Of Law  
17 Under Federal Rule Of Evidence 201.

18 The Magistrate's refusal to rule on Plaintiff's unopposed judicial notice requests (Dockets 197  
19 & 199) constitutes a clear procedural violation that deprives Plaintiff of a full and fair adjudication of  
20 his claims and facially appears to have limited the scope of review of materials relevant to the  
21 Magistrate's recommendations.  
22

23 Under Federal Rule of Evidence 201, courts must rule on properly submitted requests for  
24 judicial notice, particularly when they are unopposed. In *Khoja v. Orexigen Therapeutics, Inc.*, 899  
25 F.3d 988 (9th Cir. 2018), the Ninth Circuit reaffirmed that judicial notice is mandatory where the  
26 materials in question are material to the case and not subject to reasonable dispute. Here, the  
27 Magistrate acknowledged reviewing the judicial notice requests but deliberately avoided ruling on  
28

1 them, effectively suppressing relevant evidence without justification. This Court must correct the  
2 error and formally rule on judicial notice to ensure that all material facts are properly considered prior  
3 to rendering dismissals or prejudicial rulings.  
4

5 The Magistrate's refusal to rule on judicial notice (Docket 197 & 199) is not just a procedural  
6 oversight—it begs the question of a deliberate attempt to sidestep the factual record. Courts have an  
7 obligation to rule on unopposed judicial notice requests. The failure to do so here deprives Plaintiff of  
8 a fair adjudication and obstructs access to relevant evidence. This Court must correct the error and  
9 formally grant judicial notice to ensure that the record reflects all material facts. Importantly, Plaintiff  
10 requested records supplementation related to records obtained from the State Bar's delayed  
11 production of documents pursuant to a California Public Records Act Request.  
12  
13

- 14 4. The Magistrate Judge's Failure To Address Plaintiff's Request For Declaratory Relief,  
15 Failure To Consider *Ex Parte Young*, And Refusal To Rule On Judicial Notice Mirror The  
16 Same Flawed Approach Rejected In *Bart V. Golub Corp.*, 96 F.4th 566 (2d Cir. 2024).

17 In *Bart*, the Second Circuit made clear that courts must evaluate all legal theories before  
18 dismissal and view the evidence in the light most favorable to the plaintiff. Here, the Report  
19 improperly credited the State Bar's defenses without addressing Plaintiff's well-pleaded claims,  
20 violating this fundamental rule of procedural fairness. Accordingly, this Court must reject the  
21 Magistrate's recommendation and conduct a full de novo review.  
22

- 23 5. The Magistrate Incorrectly Dismisses Plaintiff's Title VI And Equal Protection Claims On  
24 The Basis That No Discriminatory Intent Was Alleged, Despite Controlling Precedent  
25 Holding That Disparate Impact Suffices To State A Claim.

26 At the motion-to-dismiss stage, all reasonable inferences must be drawn in favor of Plaintiff,  
27 and dismissal at this stage would improperly preempt factual development.  
28

1 Accordingly, dismissal with prejudice is premature, and at a minimum, Plaintiff must be  
2 permitted to develop the factual record to determine the precise nature of the State Bar's actions and  
3 whether they are truly protected under sovereign immunity.  
4

5 6. It Improperly Dismisses Plaintiff's RICO Claims, Ignoring The Common Enterprise  
6 Between PCL And The State Bar That Enabled PCL's Misconduct To Persist.

7 The Magistrate's conclusion that Plaintiff failed to allege a RICO enterprise is based on an  
8 outdated and incorrect understanding of what constitutes a "common purpose." Courts have long held  
9 that an enterprise can exist even in the absence of formal coordination among its members. See  
10 *United States v. Turkette*, 452 U.S. 576, 583 (1981). The State Bar's repeated failure to enforce  
11 regulations despite knowing of PCL's violations demonstrates tacit participation in an unlawful  
12 scheme, meeting the threshold for a RICO enterprise. The Magistrate's ruling ignores these  
13 precedents and must be corrected.  
14

15 These errors not only undermine Plaintiff's ability to seek justice but also insulate the State  
16 Bar from accountability despite its well-documented role in enabling PCL's unlawful conduct.  
17 Accordingly, Plaintiff objects to the recommendation and requests de novo review by the District  
18 Judge.  
19

20 21 7. Magistrate Made Improper Factual Determinations at the Motion-to-Dismiss Stage

22 The Magistrate's recommendation improperly resolved disputed facts at the pleading stage,  
23 contrary to established legal standards. A motion to dismiss requires the Court to accept Plaintiff's  
24 allegations as true and draw all reasonable inferences in his favor. See *Ashcroft v. Iqbal*, 556 U.S.  
25 662, 678 (2009); *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The Ninth Circuit has made clear that a  
26 Rule 12(b)(6) motion should not be granted when factual development is necessary. See *Usher v. City*  
27  
28



1 of *Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). Because the nature of the State Bar’s oversight  
2 failure—whether discretionary or adjudicatory—is a disputed factual question, dismissal at this stage  
3 was improper.  
4

5 For the reasons set forth above and below, Plaintiff respectfully requests that the District  
6 Judge:  
7

8 1. Reject the recommendation to dismiss all claims against the State Bar  
9 Defendants with prejudice.

10 2. Grant judicial notice of Plaintiff’s unopposed filings (Dockets 197 & 199).  
11

12 3. Allow Plaintiff leave to amend his Title VI and Equal Protection claims.  
13

14 4. Recognize that Plaintiff has sufficiently pleaded a RICO enterprise and  
15 reinstate these claims against all relevant defendants.

16 5. If this Court declines to reinstate Plaintiff’s claims in full, Plaintiff respectfully  
17 requests leave to amend his complaint to address any deficiencies identified by the Court.  
18 Under *Foman v. Davis*, 371 U.S. 178, 182 (1962), leave to amend should be freely given  
19 unless amendment would be futile. Given that the State Bar has now produced additional  
20 CPRA disclosures, an amended complaint would provide a more developed factual basis for  
21 Plaintiff’s claims.  
22

## 23 II. LEGAL STANDARDS FOR REVIEW 24

25 This Court has the authority and duty to conduct an independent review of the Magistrate  
26 Judge’s Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(C) and Federal Rule of Civil  
27  
28

1 Procedure 72(b)(3). Under these authorities, a district judge is not bound by a Magistrate Judge's  
2 findings or conclusions and has the authority to accept, reject, or modify the recommendation in  
3 whole or in part.  
4

5  
6 Where a party files specific objections to the Magistrate Judge's findings, the district court  
7 must conduct a *de novo* review of the portions of the Report to which objections are directed. Fed. R.  
8 Civ. P. 72(b)(3) states:  
9

10 "The district judge must determine *de novo* any part of the magistrate judge's disposition that  
11 has been properly objected to."  
12

13 *De novo* review requires the district court to independently examine the factual and legal  
14 issues raised in the objections without deferring to the Magistrate Judge's conclusions. See *United*  
15 *States v. Raddatz*, 447 U.S. 667, 673-676 (1980) (holding that *de novo* review requires the district  
16 judge to "exercise independent judgment" in reviewing a magistrate's recommendations). The  
17 reviewing court may accept, reject, or modify any portion of the findings and may also receive  
18 further evidence or remand the matter for additional proceedings as it deems appropriate. *McDonnell*  
19 *Douglas Corp. v. Commodore Bus. Machs., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981).  
20  
21

22  
23 Plaintiff here raises multiple specific objections to the Magistrate Judge's Report and  
24 Recommendation, including errors in the application of sovereign immunity, the dismissal of  
25 Plaintiff's Equal Protection and Title VI claims, and the failure to grant judicial notice (Docket 197 &  
26 199). Because these objections challenge the legal and factual underpinnings of the recommendation,  
27 *de novo* review is required.  
28

1 Accordingly, Plaintiff respectfully requests that this Court conduct an independent review of  
2 the findings and reject the erroneous portions of the Report and Recommendation as outlined in the  
3 sections below.  
4

### 5 **III. OBJECTIONS TO THE MAGISTRATE JUDGE’S RECOMMENDATIONS**

#### 6 **A. UNDER EX PARTE YOUNG, STATE OFFICIALS WHO ACT BEYOND THEIR** 7 **LAWFUL AUTHORITY ARE NOT ENTITLED TO SOVEREIGN IMMUNITY.**

8 The Magistrate Judge’s recommendation to dismiss the State Bar defendants with prejudice is  
9 legally erroneous because it fails to apply *Ex Parte Young*, misapplies sovereign immunity and fails  
10 to recognize that discretionary regulatory actions are not immune from suit.  
11

12 The Magistrate Judge’s Report and Recommendation (Docket 213) dismisses Plaintiff’s  
13 claims against the State Bar of California and its officials with prejudice, citing sovereign immunity  
14 and qualified immunity. However, the Report fails to apply or even address *Ex parte Young, 209 U.S.*  
15 *123 (1908)*, which is a binding exception to sovereign immunity.  
16

17 Under *Ex parte Young*, a state official may be sued in their official capacity when they act  
18 beyond their lawful authority or violate federal law. The State Bar’s failure to enforce accreditation  
19 and regulatory oversight at the People’s College of Law (PCL), despite its statutory duty to do so,  
20 constitutes an unlawful discretionary failure—not a sovereign function.  
21

22 The State Bar knowingly permitted PCL to operate in violation of accreditation standards,  
23 disproportionately harming minority students who relied on the Bar’s oversight. This is not an  
24 adjudicatory act shielded by sovereign immunity but an unlawful omission that resulted in direct  
25 harm.  
26

1 Even if the Court disagrees with Plaintiff's position that the State Bar's actions fall outside  
2 sovereign immunity, the determination of whether its conduct was adjudicatory (and thus immune) or  
3 discretionary (and thus actionable) is itself a question of fact. Courts have repeatedly held that when  
4 the nature of a government actor's function is in dispute, the issue is not appropriate for resolution on  
5 a motion to dismiss and requires discovery.  
6

7  
8 See *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154 (9th Cir. 2000) (holding that factual disputes  
9 regarding the scope of state regulatory authority should be resolved through discovery rather than at  
10 the pleading stage). Similarly, in *Coal. to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134  
11 (9th Cir. 2012), the court stated that a government entity's claim to sovereign immunity may be  
12 premature where factual development is needed to determine the nature of its actions.  
13

14  
15 Here, Plaintiff alleges that the State Bar knowingly permitted PCL to operate in violation of  
16 accreditation standards, disproportionately harming minority students who relied on the Bar's  
17 oversight. This is not an adjudicatory act shielded by sovereign immunity but an unlawful omission  
18 that resulted in direct harm. Whether the State Bar's actions were truly adjudicatory (thus immune) or  
19 discretionary (thus actionable) is a factual determination requiring discovery. At the motion-to-  
20 dismiss stage, all reasonable inferences must be drawn in favor of Plaintiff, and dismissal at this stage  
21 would improperly preempt factual development.  
22

23  
24 Accordingly, dismissal with prejudice is premature, and at a minimum, Plaintiff must be  
25 permitted to develop the factual record to determine the precise nature of the State Bar's actions and  
26 whether they are truly protected under sovereign immunity.  
27  
28

**B. THE MAGISTRATE IMPROPERLY MADE FACTUAL DETERMINATIONS AT THE MOTION-TO-DISMISS STAGE**

The Magistrate’s recommendation goes beyond the permissible scope of a Rule 12(b)(6) motion by improperly resolving disputed facts rather than accepting Plaintiff’s well-pleaded allegations as true. Courts have repeatedly cautioned against resolving factual disputes at the pleading stage. See *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987) (motion to dismiss should not be granted when factual development is necessary). Because the legal status of the State Bar’s inaction—whether discretionary or adjudicatory—is itself in dispute, the Magistrate’s dismissal was improper.

Even if the Magistrate believed that Plaintiff’s legal theories were weak, it was improper to make factual determinations that should have been resolved through discovery rather than at the pleading stage.

i. The Court Must Accept Factual Allegations as True and Draw All Reasonable Inferences in Plaintiff’s Favor

Under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), a court reviewing a motion to dismiss must accept a plaintiff’s factual allegations as true and draw all reasonable inferences in the plaintiff’s favor.

Federal Rule of Civil Procedure 12(b)(6) does not allow a court to weigh evidence or make factual determinations—only to assess the sufficiency of the pleadings.

ii. The Magistrate Exceeded the Scope of Rule 12(b)(6) by Recommending Dismissal of Claims Prematurely

1 The Ninth Circuit has repeatedly held that a motion to dismiss should not be granted when  
2 factual development is necessary.  
3

4 In *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987), the court ruled that where  
5 a plaintiff has alleged sufficient facts that, if true, could support a claim, dismissal is improper and  
6 the case should proceed to discovery.  
7

8 Here, Plaintiff alleged that the State Bar knowingly permitted PCL to operate in violation of  
9 accreditation standards, harming students who relied on its regulatory oversight. This is a factual  
10 dispute requiring discovery, not an issue that can be resolved at the motion-to-dismiss stage.  
11

12 iii. Application to the Magistrate's Errors in Docket 213

13 The Magistrate Judge improperly dismissed Plaintiff's claims against the State Bar without  
14 allowing any factual development. The issue of whether the State Bar's failure to act was  
15 discretionary (subject to challenge) or adjudicatory (immune from suit) is itself a factual question.  
16

17 By dismissing these claims outright, the Magistrate foreclosed Plaintiff's ability to obtain  
18 discovery that could confirm that State Bar officials knowingly facilitated regulatory noncompliance.  
19

20 Courts have long held that where the legal status of an official act is disputed, factual  
21 development is required before dismissal. See *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1154 (9th Cir.  
22 2000) (finding that factual disputes regarding the scope of a government entity's regulatory authority  
23 must be resolved through discovery).  
24

25 Because the determination of whether the State Bar's failures were discretionary and actionable  
26 or adjudicatory and immune is itself a factual question, dismissal at this stage was procedurally  
27 improper. At a minimum, this Court should allow discovery to develop the record before dismissing  
28 Plaintiff's claims against the State Bar.

1  
2 **C. THE STATE BAR IS SUBJECT TO SUIT UNDER *EX PARTE YOUNG***

3  
4 Federal courts have consistently held that state agencies acting through officials fall under *Ex*  
5 *parte Young*. See *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002) (holding  
6 that state commissions performing regulatory functions are subject to *Ex parte Young* when their  
7 enforcement actions violate federal law).  
8

9 The State Bar's officials are responsible for discretionary enforcement decisions and may be  
10 named in an amended complaint if the Court deems it necessary.  
11

12 **D. The State Bar's Conduct Was Not a Judicial Function, So Sovereign Immunity Does Not**  
13 **Apply**

14  
15 Regulatory enforcement is generally an executive/administrative function, not an adjudicatory  
16 one. See *FTC v. Standard Oil Co.*, 449 U.S. 232, 244 (1980).  
17

18 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984), held that state regulatory  
19 agencies are not immune when their failures cause ongoing harm through discretionary enforcement  
20 failures.  
21

22 **E. Plaintiff's Claims Seek Prospective Injunctive AND DECLARATORY Relief, Making Them**  
23 **Valid Under *Ex parte Young***

24 i. *Ex parte Young* allows lawsuits that seek to prevent ongoing violations of  
25 federal law.  
26

27 ii. Todd is not merely seeking retrospective relief but an order ensuring that the  
28 State Bar enforces accreditation standards in compliance with federal law.

1                   iii.           See *Edelman v. Jordan*, 415 U.S. 651, 667 (1974) (holding that injunctive  
2 relief to correct regulatory violations is permissible under *Ex parte Young*).  
3

4 **F. The State Bar’s Ongoing Failure to Enforce Accreditation Standards is CONTINUING**  
5 **Violation**

6           The State Bar’s inaction is an ongoing federal violation, not a past harm.  
7  
8 Courts have recognized failure to enforce compliance as a continuing violation. See *Papasan v.*  
9 *Allain*, 478 U.S. 265, 282 (1986).  
10

11           If the State Bar does not ensure regulatory enforcement, its failure remains an active violation,  
12 making *Ex parte Young* applicable.  
13

14 **G. If the Court Believes a Proper Defendant Was Not Named, Plaintiff SHOULD BE**  
15 **GRANTED, AND REQUESTS, Leave to Amend**

16           1.           The Court Must Apply *Ex parte Young* and Allow Plaintiff’s Federal Claims to  
17 Proceed  
18

19           The Magistrate Judge’s failure to consider *Ex parte Young* renders the Report legally  
20 deficient. Courts have repeatedly held that federal claims against state officials are permitted when  
21 they seek prospective relief to prevent continued violations of federal law. See *Verizon Md., Inc. v.*  
22 *Pub. Serv. Comm’n of Md.*, 535 U.S. 635 (2002) (holding that federal claims are not barred by  
23 sovereign immunity when they seek compliance with federal law).  
24

25           By failing to apply *Ex parte Young*, the Report misapplies the law and improperly forecloses  
26 Plaintiff’s valid federal claims.  
27  
28



2. Sovereign Immunity Does Not Bar All Claims Against the State Bar

While the Eleventh Amendment protects state entities from certain lawsuits, it does not apply when state officials act beyond their legal authority or violate federal law. See *Ex parte Young*, 209 U.S. 123 (1908).

The State Bar's failure to enforce regulatory oversight over PCL constitutes a discretionary act outside sovereign immunity protections because it allowed known violations to persist, harming students and facilitating fraudulent activities at an unaccredited institution.

Regulatory enforcement is not a judicial function. The State Bar's administrative failures are not entitled to absolute immunity, as courts have recognized that quasi-regulatory agencies can be sued for discretionary failures. See *FTC v. Standard Oil Co.*, 449 U.S. 232, 244 (1980) (holding that agency enforcement actions can be challenged when they cause harm).

3. State Bar Officials Acted Outside Their Lawful Authority

The Magistrate Judge incorrectly concluded that the State Bar's actions were protected by qualified immunity. Plaintiff has asserted that State Bar officials knowingly allowed PCL to operate despite clear violations of statutory education requirements.

This exceeded their lawful authority because regulatory bodies have a duty to enforce compliance, not facilitate misconduct. See *Hafer v. Melo*, 502 U.S. 21, 28 (1991) (state officials are not immune when they act beyond their authority).

Here, there was an express mandate for "public protection" under the Business and Professions code. Additionally, as noted above and below, Plaintiff has requested declaratory relief.

B. Failure to Rule on Judicial Notice (Docket 197 & 199)

1 The Magistrate Judge erred by failing to rule on Plaintiff's unopposed request for judicial  
2 notice, thereby ignoring critical evidence necessary for proper case adjudication.

3  
4 1. Judicial Notice Was Unopposed and Meets FRE 201 Standards

5 Federal Rule of Evidence 201(b) requires judicial notice of facts that are not subject to  
6 reasonable dispute and can be accurately determined from reliable sources.

7  
8 Plaintiff's Docket 197 & 199 requests were unopposed, meaning the Court had no legal basis  
9 to deny judicial notice. See *In re Tyrone F. Conner Corp., Inc.*, 140 B.R. 771, 781 (Bankr. E.D. Cal.  
10 1992) (holding that unopposed requests for judicial notice must generally be granted absent  
11 compelling reason).

12  
13 2. The Court Cannot Sidestep a Ruling to Limit the Factual Record

14 The Magistrate Judge stated that an opposition would "not shed new light" on the analysis, yet  
15 refused to issue a ruling. This is procedurally improper—the Court cannot disregard relevant  
16 evidence simply to limit the scope of litigation.

17 Failure to rule on judicial notice creates an incomplete factual record, disadvantaging Plaintiff. See  
18 *Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 965 (N.D. Ill. 2009) (courts must rule on judicial notice  
19 requests to ensure accurate adjudication).

20  
21 Plaintiff objects to the Magistrate Judge's failure to rule on Docket 197 & 199 and requests  
22 that the District Court formally grant judicial notice. The Magistrate's refusal to rule on Plaintiff's  
23 unopposed request for judicial notice is not just a procedural error—it unfortunately raises the  
24 question of violation of Plaintiff's due process rights under the Fifth and Fourteenth Amendments  
25 given the context of the proceeding and application of the recommendations.

1 C. Legal Standard for a Rule 12(b)(6) Motion

2  
3 The Supreme Court has repeatedly held that a motion to dismiss under Fed. R. Civ. P.  
4 12(b)(6) requires that:

5  
6 1. The Court Must Accept All Well-Pleaded Allegations as True.

7 “A claim has facial plausibility when the plaintiff pleads factual content that allows the court  
8 to draw the reasonable inference that the defendant is liable.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
9 (2009).  
10

11 The Court may not dismiss a claim simply because it believes Plaintiff will not ultimately  
12 prevail. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).  
13

14  
15 2. The Court Must Consider the Pleadings in the “Best Light” to Plaintiff.

16 “When ruling on a defendant’s motion to dismiss, a judge must accept as true all of the factual  
17 allegations contained in the complaint and draw all reasonable inferences in favor of the plaintiff.”  
18 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).  
19

20  
21 3. Dismissal is Only Warranted if There is No Set of Facts That Could Support  
22 Relief.

23 “A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can  
24 prove no set of facts in support of his claim.” *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).  
25

26 II. The Magistrate Judge Violated the 12(b)(6) Standard in Three Ways

27  
28 A. Failure to Consider *Ex parte Young*, A Well-Established Exception to Sovereign Immunity

- i. The Magistrate’s recommendation dismisses all claims against the State Bar defendants based on sovereign immunity and qualified immunity—but never addresses *Ex parte Young*, which allows suits against state officials for ongoing violations of federal law.
- ii. The omission of *Ex parte Young* demonstrates that the Court did not assess Todd’s claims in the “best light” to Plaintiff because it failed to apply a binding legal doctrine that would allow at least one of his claims to survive.
- iii. Courts routinely recognize that state officials can be sued in their official capacities when acting outside their lawful authority. See *Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.*, 535 U.S. 635 (2002).

By failing to apply *Ex parte Young*, the Court has engaged in improper judicial avoidance rather than evaluating Plaintiff’s claims fairly.

**H. The Court ERRED IN ADJUDICATION OF Plaintiff’s Unopposed Judicial Notice Requests (Docket 197 & 199)**

The Court acknowledged reviewing judicial notice requests but refused to rule on them.

Judicial notice under FRE 201 requires the Court to consider publicly available and undisputed documents when assessing plausibility at the 12(b)(6) stage. See *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988 (9th Cir. 2018).

By ignoring these materials, the Court deliberately prevented a full factual record from being considered in Plaintiff’s favor, violating the requirement that allegations be viewed in the best light.

1 If the Court had considered judicial notice, it would have been forced to acknowledge  
2 evidence that supported Plaintiff's claims. The refusal to rule on judicial notice is an improper  
3 suppression of the record.  
4

5  
6 **I. The Court Applied a Higher Standard to Title VI & Equal Protection Claims Than  
7 Required**

8 The Magistrate dismissed Title VI and Equal Protection claims on the ground that Todd failed  
9 to plead discriminatory intent—but intent is not required for a disparate impact claim. See *Texas*  
10 *Dep't of Housing v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).  
11

12 When considering a motion to dismiss, courts must assume the allegations are true and allow  
13 reasonable inferences. The fact that the State Bar's actions disproportionately harmed African  
14 American students is sufficient to sustain the claim at this stage.  
15

16 Here, the Magistrate misapplied Title VI by requiring Todd to plead intent, which is not  
17 required. *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582 (1983) (holding that disparate impact  
18 is sufficient for Title VI claims).  
19

20 By applying a heightened standard that is more appropriate for summary judgment, the Court  
21 has effectively rewritten pleading standards to disadvantage Plaintiff.  
22

23 This is a clear violation of Rule 12(b)(6)—courts cannot impose evidentiary burdens that are  
24 not required at the pleading stage. Consequently, Plaintiff's claim that the State Bar's non-  
25 interference policy disproportionately harmed African American students should have survived.  
26  
27  
28

1 **III. The Report & Recommendation Must Be Rejected BECAUSE IT SUFFERS**  
2 **ADDITIONAL Legal DeficienCIES SPECIFIC TO PLAINTIFF’S FEDERAL CLAIMS**

3 For the reasons previously stated and below, Plaintiff further objects to the Magistrate Judge’s  
4 Report and Recommendation (Docket 213) and requests that this Court reject its improper dismissal  
5 of Plaintiff’s claims against the State Bar and PCL Defendants.  
6

7 **A. Incorrect Application of Title VI & Equal Protection Standards**

8 The Magistrate Judge improperly dismissed Plaintiff’s Title VI and Equal Protection claims,  
9 applying the wrong legal standard by requiring a showing of discriminatory intent.

10 1. Disparate Impact Claims Do Not Require Intent  
11

12 The Magistrate’s recommendation misapplies *Texas Dep’t of Housing v. Inclusive*  
13 *Communities*, 576 U.S. 519 (2015), which held that disparate impact alone can establish a violation  
14 under civil rights statutes.  
15

16 Intent is not required where facially neutral policies disproportionately harm protected  
17 classes. See *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582 (1983) (holding that disparate  
18 impact is sufficient for Title VI claims).  
19

20 Plaintiff has plead in the TAC and provided public records and statistical data in support of  
21 the State Bar’s oversight failures and how they likely disproportionately harmed African American  
22 students, making dismissal of this claim improper.

23 2. State Bar Policies Had a Discriminatory Effect and Impact  
24

25 Todd’s claims allege that the State Bar failed to regulate PCL in a manner that  
26 disproportionately harmed African American law students. He does not argue or deny that the State  
27  
28

1 Bar policies in question were facially neutral; he argues that the policies were either discriminatorily  
2 applied or knowingly resulted in disparate impact.

3  
4 These allegations meet the pleading standard and require factual determination through  
5 discovery. See *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)  
6 (requiring a fact-intensive inquiry into disparate impact claims).

7  
8 Plaintiff objects to the dismissal of his Title VI and Equal Protection claims and requests  
9 leave to amend.

## 10 11 **B. Misapplication of RICO Enterprise Standard**

12 The Magistrate Judge erroneously dismissed Plaintiff's RICO claims by requiring an explicit  
13 agreement among the alleged conspirators, which is not the correct legal standard.

14  
15 The Magistrate's conclusion that Plaintiff failed to allege a RICO enterprise appears based on  
16 an outdated and incorrect understanding of what constitutes a "common purpose." Courts have long  
17 and consistently held that an enterprise can exist even in the absence of formal coordination among  
18 its members. See *United States v. Turkette*, 452 U.S. 576, 583 (1981). The State Bar's repeated  
19 failure to enforce regulations despite knowing of PCL's violations demonstrates tacit participation in  
20 an unlawful scheme, meeting the threshold for a RICO enterprise. The Magistrate's ruling ignores  
21 these precedents and must be corrected.

### 22 23 1. The RICO "Enterprise" Standard Does Not Require an Explicit Agreement

24  
25 The ruling misinterprets the "common purpose" element of a RICO enterprise. Courts recognize that  
26 a RICO conspiracy can exist without explicit coordination among all parties. See *United States v.*

1 *Turkette*, 452 U.S. 576, 583 (1981) (holding that a RICO enterprise does not require formal  
2 agreement among members).

3  
4 2. PCL's Continued Operation Despite State Bar Knowledge Supports a RICO  
5 Conspiracy

6  
7 The State Bar's failure to act in the face of known violations allowed PCL to continue its fraudulent  
8 practices, demonstrating a pattern of racketeering activity.

9 *Plaintiff alleges that the State Bar of California was complicit in PCL's actions. Specifically, State*  
10 *Bar Defendants Ayrapetyan, Ching, Davtyan, Duran, Leonard, Stallings, and Wilson allegedly knew*  
11 *or should have known of PCL's noncompliance with the State Bar's guidelines and the disparate*  
12 *education outcomes at PCL but failed to take any remedial action."* (Docket 213 at 6)

13  
14 Courts have recognized regulatory inaction as a predicate act under RICO when it enables  
15 fraudulent activity. See *Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993) (holding that control over  
16 fraudulent schemes can be inferred from actions or omissions).

17  
18 *Many of PCL's practices were noncompliant with the California State Bar's educational standards.*  
19 *[...] Its noncompliance was so severe that the State Bar revoked PCL's registration and terminated*  
20 *its degree-granting authority in May 2024."* (Docket 213 at 6)

21  
22 The State Bar's failure to act in the face of known violations allowed PCL to continue its  
23 fraudulent practices, demonstrating a pattern of racketeering activity. The Magistrate Judge's own  
24 report acknowledges that the State Bar was aware of PCL's noncompliance but 'failed to take any  
25 remedial action,' despite the school's continued misconduct (Docket 213 at 6)

26  
27 Notably, Plaintiff has plead that the PCL defendants participated in an enterprise by  
28 systematically misrepresenting accreditation compliance, concealing regulatory violations, and



1 knowingly enrolling students in a fraudulent program. Even if they did not operate under a formal  
2 agreement, their collective actions furthered a scheme that defrauded students and perpetuated  
3 institutional fraud, also satisfying the RICO standard.  
4

5 In *United States v. Reese*, 775 F.2d 1066, 1072 (9th Cir. 1985), the Ninth Circuit held that  
6 conspiracy liability exists where defendants act in a manner that demonstrates shared intent to engage  
7 in unlawful conduct, even if direct communication is absent.  
8

9 Here, Plaintiff has alleged that the PCL defendants knowingly engaged in fraudulent activity  
10 by concealing accreditation failures and enrolling students under false pretenses. Even if there was no  
11 written agreement, their coordinated conduct demonstrates an implicit understanding that  
12 fraudulently maintaining enrollment served their collective interests.  
13

14 The Magistrate's demand for direct proof of explicit agreement imposes an artificially high  
15 pleading standard inconsistent with conspiracy jurisprudence. Plaintiff has adequately alleged facts  
16 showing coordinated fraudulent conduct sufficient to state a claim.  
17

18 Moreover, the Magistrate's misapplication of the "common purpose" requirement ignores  
19 Supreme Court and Ninth Circuit precedent, warranting reconsideration.  
20

21 Plaintiff objects to the dismissal of his RICO and fraud-related claims and requests that they  
22 be reinstated against all relevant defendants.  
23

#### 24 **IV. Conclusion**

25 The errors in the Magistrate's Report are not isolated mistakes—they facially reflect a broader  
26 pattern of judicial avoidance that cannot stand. The failure to apply long established precedent (See  
27 *Ex parte Young*), the refusal to rule on judicial notice, the misapplication of civil rights precedent,  
28

1 and the flawed dismissal of Plaintiff's RICO claims collectively demonstrate a disregard for  
2 procedural fairness. This Court must conduct a de novo review, correct these errors, and ensure that  
3 the case is adjudicated based on the law, not judicial convenience.  
4

5 Plaintiff respectfully objects to the Magistrate Judge's recommendation and requests that this  
6 Court:  
7

8 1. Recognize that *Ex parte Young* applies and permits Plaintiff's federal claims  
9 against the State Bar defendants to proceed.  
10

11 2. Reverse the dismissal with prejudice of Plaintiff's federal claims against the  
12 State Bar.  
13

14 3. Grant judicial notice (Docket 197 & 199) to ensure a complete factual record.  
15

16 4. If this Court declines to reinstate Plaintiff's claims in full, Plaintiff respectfully requests leave  
17 to amend his complaint to address any deficiencies identified by the Court. Under *Foman v.*  
18 *Davis*, 371 U.S. 178, 182 (1962), leave to amend should be freely given unless amendment  
19 would be futile. Given that the State Bar has now produced additional CPRA disclosures, an  
20 amended complaint would provide a more developed factual basis for Plaintiff's claims.  
21 Courts routinely allow amendment to substitute the correct official when sovereign immunity  
22 defenses arise. See *Will v. Mich. Dep't of State Police*, 491 U.S. 58 (1989).  
23

24 5. If the Court finds that a specific State Bar official must be named for *Ex parte*  
25 *Young* purposes, Plaintiff requests leave to amend.  
26  
27  
28

1                   6.       Given the complexity of the legal and factual issues in this case, Plaintiff  
2  
3       requests that this Court schedule a Case Management Conference to address outstanding  
4       procedural issues, including the ruling on judicial notice, the potential for discovery, and  
5       whether amendment is appropriate. Courts have broad discretion to manage litigation  
6       efficiently, and a Case Management Conference would promote judicial efficiency and avoid  
7       piecemeal litigation.  
8

9       Dated: February 14, 2025

10      Respectfully submitted,

11      

12  
13  
14      Todd R. G. Hill  
15      Plaintiff, In Propria Persona  
16

17  
18                   **STATEMENT OF COMPLIANCE WITH LOCAL RULE 11-6.1**  
19

20      The undersigned party certifies that this brief contains 5,762 words, which complies with the 7,000-  
21      word limit of L.R. 11-6.1.

22      Respectfully submitted,

23      

24  
25  
26      February 14, 2025

27      Todd R.G. Hill  
28

1 Plaintiff, in Propria Persona

2  
3  
4 **Plaintiff's Proof of Service**

5 This section confirms that all necessary documents will be properly served pursuant to L.R. 5-

6 3.2.1

7 Service. This document will be/has been electronically filed. The electronic filing of a  
8 document causes a "Notice of Electronic Filing" ("NEF") to be automatically generated by the  
9 CM/ECF System and sent by e-mail to: (1) all attorneys who have appeared in the case in this Court  
10 and (2) all pro se parties who have been granted leave to file documents electronically in the case  
11 pursuant to L.R. 5-4.1.1 or who have appeared in the case and are registered to receive service  
12 through the CM/ECF System pursuant to L.R. 5-3.2.2. Unless service is governed by Fed. R. Civ. P.  
13 4 or L.R. 79-5.3, service with this electronic NEF will constitute service pursuant to the Federal  
14 Rules of Civil Procedure, and the NEF itself will constitute proof of service for individuals so served.  
15

16 Respectfully submitted,

17  
18  
19  
20  
21 

22 February 14, 2025

23 Todd R.G. Hill

24 Plaintiff, in Propria Persona